

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERVARES DEVENU WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

May 2, 2006

No. 260638

Wayne Circuit Court

LC No. 04-008816-01

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals by right his bench trial convictions of first-degree home invasion, MCL 750.110a, kidnapping, MCL 750.349, carjacking, MCL 750.529a, and felonious assault, MCL 750.82. He was sentenced as a habitual offender to concurrent prison terms of 25 to 40 years each for the kidnapping, carjacking, and home invasion convictions, and to a concurrent prison term of three to eight years for the assault conviction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises from defendant's prolonged assault on his ex-girlfriend, Marleshia Scott, on July 30, 2004. Defendant broke into Scott's home, apparently angry that he had been shot by one of Scott's friends, and blaming her for "setting him up." He struck her, and then forced her to leave the home and get into her car. He attempted to drive her to an undisclosed location while informing her of his plans to kill her. She escaped by jumping from the car while at a stoplight, and ran to a nearby gas station. Defendant chased her and drove the car into her, pinning her legs against the gas station doors. He left the car and began to beat her. She managed to free her legs and run to a nearby van where other people intervened. Defendant then drove off in Scott's car.

Defendant maintains that his convictions for both kidnapping and carjacking constitute multiple punishments for the same offense, and thus violate the constitutional prohibitions against double jeopardy. We disagree.

A claim of double jeopardy presents a question of law that we review de novo. *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001). In order to preserve a double jeopardy issue, the defendant must raise it at trial. *People v Wilson*, 242 Mich App 350, 359-360; 619 NW2d 413 (2000). Defendant did not raise the double jeopardy issue at trial, and thus has failed

to properly preserve this issue. We review an unpreserved constitutional issue for plain error affecting a defendant's substantial rights. *Id.*

The United States and Michigan Constitutions preclude placing a criminal defendant in jeopardy twice for the same offense. US Const, Am V; Const 1963, art 1, § 15. This prohibition applies to multiple punishments as well as to multiple prosecutions for the same offense. *People v Robideau*, 419 Mich 458, 468; 355 NW2d 592 (1984). In the case of multiple punishments, the defendant's protected interest is "in not having more punishment imposed than that intended by the Legislature." *Id.* at 485; *People v Hurst*, 205 Mich App 634, 636-637; 517 NW2d 858 (1994).

Under the Michigan Constitution, determination of legislative intent is a matter of statutory construction and involves traditional considerations of the subject, language, and history of the statutes. *People v Denio*, 454 Mich 691, 708; 564 NW2d 13 (1997); *People v Dillard*, 246 Mich App 163, 166; 631 NW2d 755 (2001). Legislative intent may be determined by examining the type of harm each statute is designed to prevent. *Robideau, supra* at 487. Where two statutes prohibit violations of the same social norm, it generally can be concluded that the Legislature did not intend multiple punishments. *Id.* Additionally, legislative intent may be found in the amount of punishment authorized by the Legislature and whether the statutes are hierarchical or cumulative. *Id.*; *People v Harrington*, 194 Mich App 424, 428; 487 NW2d 479 (1992).

We hold that the Legislature intended the imposition of multiple punishments for kidnapping and carjacking. We conclude that the statutes pertaining to carjacking and kidnapping prohibit conduct that is violative of distinct social norms. The focus of carjacking is to prohibit takings of automobiles accomplished with force or the mere threat of force. *People v Parker*, 230 Mich App 337, 343; 584 NW2d 336 (1998). In contrast, the focus of kidnapping is clearly on an unwilling victim being secretly confined or forcibly moved. *People v Rollins*, 207 Mich App 465, 470; 525 NW2d 484 (1994).

A further source of legislative intent is the amount of punishment expressly authorized by the Legislature. *Robideau, supra* at 487. MCL 750.529a(3) specifically provides:

(3) A sentence imposed for a violation of this section may be imposed to run consecutively to any other sentence imposed for a conviction that arises out of the same transaction.

This language supports the conclusion that the Legislature intended and authorized separate punishments for kidnapping and carjacking. We find defendant's claim that his convictions violate the Michigan constitutional prohibition against double jeopardy unpersuasive.

Defendant also claims that his convictions violate the Double Jeopardy Clause of the United States Constitution under the "same elements" test enunciated in *Blockburger v United States*, 284 US 299; 52 S Ct 180; 76 L Ed 306 (1932). That test bars prosecution or punishment under separate statutes unless each statute requires proof of at least one element that the other does not. *Id.* at 304. Assuming the *Blockburger* test applies, it is not violated.

The kidnapping statute and the carjacking statute contain manifestly different elements. The elements of a forced confinement kidnapping<sup>1</sup> are: (1) forcible confinement of the victim within the state; (2) done willfully, maliciously, and without lawful authority; (3) against the will of the victim; and, (4) “an asportation of the victim which is not merely incidental to an underlying crime unless the crime involves murder, extortion or taking a hostage. Asportation incidental to these types of crimes is sufficient asportation for a kidnapping conviction.” *People v Wesley*, 421 Mich 375, 388; 365 NW2d 692 (1984). In contrast, in order to sustain a carjacking conviction, the prosecution must show: (1) that the defendant took a motor vehicle from another person; (2) in the presence of that person, a passenger, or any other person in lawful possession of the motor vehicle; and, (3) that the defendant did so either by force or violence, by threat of force or violence, or by putting the other person in fear. *People v Davenport*, 230 Mich App 577, 579; 583 NW2d 919 (1998).

Under the *Blockburger, supra*, test, carjacking and kidnapping have different elements and are not the same offense for double jeopardy purposes. We reject defendant’s claim that his convictions for carjacking and kidnapping are improper under double jeopardy grounds.

Affirmed.

/s/ Helene N. White  
/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot

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<sup>1</sup> The trial court determined that defendant was guilty of kidnapping in that he forcibly confined Scott against her will and forced her to leave her residence and enter the car, and that asportation was not merely incidental to the other offenses (Tr I, 127-128).